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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/824,023
Filing Date: April 14, 2004
Appellant(s): NISHIO ET AL.

Mark D. Saralino Reg. No. 34,243
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 2, 2008 appealing from the Office action mailed June 2, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP0028067	Totterdell	05-1981
4955213	Ohsugi et al	09-1990
6840553	Dirnberger et al	01-2005
4696171	Babuin	09-1987

5000015	Nakamura et al	03-1991
6256823	Kronbetter et al	07-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trotterdell (EP '0028067, hereafter '067) and Ohsugi et al. (US Patent 4,955,213 known hereafter as '213).

Claim 1

'067 teaches:

An automatic washing machine (p. 3 lines 25-31), including a drum (3) having an axis of rotation in a direction crossing a vertical direction and a water tank (2) surrounding said drum (p. 3 lines 25-30) comprising: a water level detecting unit detecting level of water in said water tank (p. 2 lines 12-29); a water feed unit (5) for feeding water to said water tank (p. 3 lines 33-34); and a control portion operating said washing machine for washing, rinsing and draining (p. 4 lines 6-21). Additionally the examiner takes official notice that one of ordinary skill in the art at the time of the invention would have known that an automatic washing machine includes a controller that controls performing washing, rinsing and draining of the washing machine. It does not teach that the control portion detects the water level for a prescribed time period and thereafter turns off the power supply. '213 teaches a pressure switch which detects a water level in a washing tub (col. 3 lines 62-64) and a power source switch that is in the off condition after about five minutes from the finish of all washing processes (col. 6 lines 5-10) in order to conserve energy. At the time of the invention to one of ordinary skill in the art would have been motivated to program the control portion of '067 to switch the power source of '213 to the "off" position in order to conserve energy while the machine was not in use. A prescribed "time period set in accordance with a time period calculated from a minimum flow rate of water fed from said water feed unit and a smallest amount of water detectable by said water level detecting unit" is not required to be calculated by the controller. The time period could be entered manually and therefore not a feature of the apparatus nor does it further limit the apparatus claim. The time period is a feature of the use of the apparatus. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or

what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067 and '213 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067 and '213, and no such structural distinction is apparent.

Claim 3

Claim 3 is rejected as taught in Claim 1 and in further view of '067 which additionally teaches a washing machine, including a drum having an axis of rotation in a direction crossing a vertical direction and a water tank surrounding said drum (p. 3 lines 25-30); wherein said water tank has an opening in a plane crossing said axis of rotation; said washing machine comprising: a door opening and closing said opening of said water tank (only figure, item number 4; p. 3 lines 31); a water feed unit for feeding water to said water tank (p. 3 line 33); a water leakage detecting unit monitoring water leakage at said water feed unit and detecting the water level in said water tank (p. 2 lines 12-29, p. 3 lines 12-16, by applicants admission on page 5 lines 20-28 of the Specification the water leakage detecting unit can include the "sensor providing a signal indicative of level of liquid in the tub); and a control portion operating said washing machine for washing; wherein when said operation for washing is completed, said control portion causes said leakage detecting unit to monitor water leakage at said water feed unit only for a prescribed time

period, and thereafter power supply to said control portion is turned off which not taught by '067, but rendered obvious by '213 for the same reasons as Claim 1. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067 and '213 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067 and '213, and no such structural distinction is apparent.

3. Claims 5, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over '067 and '213 and in further view of Dirnberger et al. (US Patent 6,840,553 known hereafter as '553).

Claim 5

'067 and '213 teach the features of Claim 3, a level sensor and transmitter, and '067 further teaches that flooding can occur because of a washing machine malfunction (p. 2 lines 1-10). It does not teach

a lock unit for preventing opening of said door;

wherein said control portion causes said lock unit to lock said door when said

leakage detecting unit detects water leakage at said water feed unit.

But '553 teaches a lock for preventing opening of a washing machine door and a controller to control the lock when opening the door would cause water to escape (col. 4 lines 48-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have added the lock and controller of '553 to the washing machine of '067 to have prevented flooding. In such a system it would have been obvious to one of ordinary skill in the art at the time of the invention to have had the level sensor of '067 provide feedback to the controller of '553 because the water height would have been an indicator of whether the machine would overflow. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213 and '553 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

Claim 8

‘067 teaches:

A washing machine, including a drum having an axis of rotation in a direction crossing a vertical direction and a water tank surrounding said drum (p. 3 lines 25-30) comprising: a water level detecting unit detecting level of water in said water tank (p. 2 lines 12-29); a water feed unit (5) for feeding water to said water tank (p. 3 lines 33-34); a door (4) opening and closing said opening of said water tank and a control portion operating said washing machine for washing (p. 4 lines 6-9);

It does not teach wherein when said operation for washing is completed, said control portion which causes said water level detecting unit to detect water level in said water tank only for a prescribed time period, and thereafter power supply to said control portion is turned off nor does it teach a lock unit for locking said door.

‘213 teaches a control portion which causes said water level detecting unit to detect water level in said water tank only for a prescribed time period, and thereafter power supply to said control portion is turned off as discussed in Claim 1. Additionally ‘553 teaches a lock unit for locking said door as discussed in Claim 5. At the time of the invention one of ordinary skill in the art would have been motivated to combine these inventions in order to prevent the water from escaping the washing machine. When these two inventions are combined the result is a washing machine that will detect multiple water levels. When the water is at or below the lowest detectable level the door will unlock the door. After the prescribed time period the control portion will turn off from the teaching of ‘213 (col. 6 lines 5-10). A prescribed “time period set in accordance with a time period calculated from a minimum flow rate of water fed from said water feed unit and a smallest amount of water detectable by said water level detecting unit” is

not required to be calculated by the controller. The time period could be entered manually and therefore not a feature of the apparatus nor does it further limit the apparatus claim. The time period is a feature of the use of the apparatus. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213 and '553 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

Claim 10

Claim 10 is rejected under the teachings of Claim 8. It would have been obvious to one skilled in the art at the time of the invention that if a door to a washing machine was locked that after the machine was finished washing the door would have to open and unlock in order to remove its contents. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152

USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213 and '553 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

4. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over '067 in view of '213 and '553 as applied to Claim 5 and further in view of Babuin (US Patent 4,696,171 hereafter '171) and Nakamura et al (US Patent 5,000,015 known hereafter as '015).

Claim 6

'067 and '213 teach the features of Claim 5 as discussed above. '067 teaches a drainage unit for draining the water in the tank (p. 3 lines 32-34), and a water leakage detecting unit (p. 2 lines 12-19, p. 3 lines 12-16) as discussed in Claim 4. '067 does not teach a lock detecting unit nor responding to a pressure switch (or level sensor) that indicates overflow by draining washing liquid from the wash tub. '533 teaches a lock as discussed in Claim 5, but does not teach sensors to determine if the door is locked on not. '015 also teaches a lock and a lock detecting unit (col. 13 lines 60-67). At the time of the invention to one of ordinary skill in the art would have known to combine the drainage unit and leak detecting unit of '067 and '213 with the lock detecting unit of '015 in order to ensure the door was locked properly and not malfunctioning in order to prevent flooding. '171 teaches responding to a pressure switch (or level sensor) that indicates overflow by draining washing liquid from the wash tub (col. 11 lines 56-67). At the time of the invention to one of ordinary skill in the art it would have been obvious to use a leakage detecting

unit that detects a high water level that would tell the control portion to open the drain line in combination with a lock and lock detecting unit in order to have prevented overflow. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553, '015 and '171 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

Claim 7

Claim 7 is rejected as taught in Claim 6 and after further review of '015. '015 teaches that if the door is not able to be locked a sensor detects that the lid is open and a buzzer indicates trouble with the lid (col. 13 lines 60-67). One of ordinary skill in the art at the time of the invention would have known to use the buzzer of '015 with the lock and lock detecting unit discussed in Claim 6 to alert the user of the washing machine that the door lock was malfunctioning so that the user could take the proper steps to fix the door lock in order to use the washing machine properly. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI

1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553, '015 and '171 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213 and '553, and no such structural distinction is apparent.

5. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '067, '213 and '553 as applied to Claim 8 and further in view of '015.

Claim 11

'067, '213 and '553 teach the limitations of Claim 8. They do not teach a lock detection unit. '015 teaches the lock detecting unit. Combining '067, '213 and '553 with '015 renders obvious for the reasons given above regarding Claims 6-7. When these inventions are combined the result is a washing machine that will detect multiple water levels. When the water is above the first water level the drain will open if the door is not locked, and if water is not detected (because it is below the first level) the control portion will turn off. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As

long as the apparatus of '067, '213, '553 and '015 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213, '553 and '015, and no such structural distinction is apparent.

Claim 12

Claim 12 is rejected because of the teaching of Claim 11 and additionally because of further review of '015 (col. 13 lines 60-68) as discussed in Claim 7.

Claim 13

Additionally '067 teaches a drainage unit (p.3 lines 32-34) and that after washing is completed and the water is between the first sensor (switch 12) and second sensor the control system tells the drainage system to drain the water tank (p. 5 lines 7-25). Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of '067, '213, '553 and '015 is capable of being configured to perform the functions as described in applicants claims, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by '067, '213, '553 and '015, and no such structural distinction is apparent.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over '067, '213, '553, '015 and further in view of Kronbetter et al. (US Patent 6,256,823 known hereafter as '823).

Claim 14

Claim 14 is rejected as taught in Claim 13 and in further review '067 which teaches a washing machine with multiple level detectors. It does not teach a relationship between the position of the level detectors and the height of the door. '823 teaches "water level is positioned lower than a lowermost plane of said opening of said water tank." (Figure 2, col. 3 lines 50-57) where there are multiple water levels possible in the water tank. At the time of the invention it would be obvious to one skilled in the art that one would be motivated to prevent water from escaping the washing machine as taught in '823 and therefore the height of the level detectors with respect to the door could be incorporated into the invention discussed in Claim 13.

(10) Response to Argument

7. Argument A:
8. The applicant is arguing case law over the significance of the how the controller is designed. First, the above rejection address all the structural elements of the washing machine, which the applicant is not disputing but that applicant is arguing that the method steps stated in the controller limitation should be considered as structural limitations. Collaboration Properties, Inc. v. Tandberg ASA recognized that it is permissible to define structure in terms of function using "configured to", it also unequivocally states that Tandberg's position that the language "configured to" injects method steps into the system claim were _incorrect_ (p. 1535).

9. The second set of case law provided by the applicant is for a controller programmed to perform certain method steps. This case law focuses on controller limitations that state what the controller is programmed to do, however in this case controller is not programmed to do the method steps thus the case law is not relevant.

10. Argument B:

11. The applicant is arguing that the claim language requires a specific calculation to occur to determine the specific time period. This conclusion is incorrect; the claim language only requires the prescribed time period to be **substantially** (emphasis added) equal to what would be yielded by the equation. There has been no evidence or argument given that states that the time given in the prior art is not **substantially** the same as the time frame calculated by the equation. Therefore the above art meets the limitations of the claims.

12. Argument C (claims 1 and 3) part 1:

13. Applicant is arguing that the prior art (specifically '067) does not teach monitoring of the level does not occur at the end of the wash cycle. However this argument does not address the combination of references since this reference was used to show the basic structure of the washing machine, the level detection unit and the controller, this is why the secondary reference ('213) was used to show when the monitoring occurred.

14. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

15. Argument C part 2:

16. Applicant is arguing that the prior art (specifically '213) does not teach detecting leakage at the water feed unit. First off claim 1 does not require a water leakage detecting unit, thus this argument in relation with claim 1 is moot. In concerns for claim 3, '213 was not used to teach a water leakage detecting unit, '067 was used to teach a water leakage detecting unit, thus this argument with respect to claim 3 is also moot.

17. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

18. Applicant further argues that the time period taught by the prior art to shut off the power is arbitrary and is not calculated by the equation provided in the claim limitations. However this argument is flawed. The claim limitation states that "time period **substantially** equaling a smallest amount....", so the time period has to substantially equaling the answer the equation. The prior art ('213) teaches that multiple times can be used to set the prescribed time period to shut off the power ('213, col. 6, lines 5-28) from one minute to an hour. However the applicant has not shown how these times are not substantially equal to the time calculated by the equation, therefore it is the same time period. The applicant further used exemplary time periods of 10 and 15 minutes (page 14, lines 11-19 of their specification and the bottom of page 9) which falls within the time range taught by the prior art.

19. Applicant further argues that the prior art controller does not recognize when the washing cycle is complete and then shuts off the power. However '213 clearly teaches that the power is

shut off after the end of the washing cycle, thus the controller recognizes the end of the cycle (col. 6, lines 5-10).

20. Arguments D (claims 5, 8 and 10):

21. Applicant is arguing that the prior art does not teach that the door is locked when the when the water unit detects leakage from the feed unit. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Furthermore, the prior art teaches a leakage detecting unit for the feed unit, and teaches locking the door in response to a detected level (see '553 reference). Therefore since the art teaches detecting leakage in a water feed, hence a rise in water level in the tank will occur, it is well within the ordinary skill level of one ordinary skill in the art to tie the controller responsive door lock (which is used to prevent water flow from the door) to the feed water leakage detecting unit to prevent the water from exiting the machine through the door since it rising from the leak.

22. Arguments E (claims 6 and 7):

23. Applicant is arguing the same as in part D (see above for response) and that the '015 only detects when the lid is faulty not when it locks. '015 clearly teaches a detecting unit for detecting when the lid/door is locked (see col. 10, lines 55-60, which clearly states that a single is generated by locking switch when the lock is engaged). Applicant is arguing that the level switch taught by '015 is only for detecting the level to prevent an overflow and not for detecting a leakage from the water feed unit. The examiner disagrees with the applicant's conclusions

here. The art clearly teaches a pressure switch that detects the level (see above rejection), therefore this sensor will detect any level increase whether it is from overflow or increase of level from a leak in the water feed unit, and the build up of water from a leak will cause an overflow. Thus it is within the ordinary skill level of one of ordinary skill in the art to combine the reference as suggested above in the rejection.

24. Arguments F (claims 11-13):

25. Applicant is arguing that the art does not meet their claim limitations. When these inventions are combined the result is a washing machine that will detect multiple water levels. When the water is above the first water level the drain will open if the door is not locked, and if water is not detected (because it is below the first level) the control portion will turn off. Additionally, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process.

26. In response to applicant's argument that the art does not teach that the drain pump is activated after water is detected in the tub if the machine is in a non-operational status, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

27. Arguments G (claim 14):

28. See claim response to claims 11-13 above

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Samuel A Waldbaum/

Examiner, Art Unit 1792

Conferees:

/Michael Cleveland/

Supervisory Patent Examiner, Art Unit 1792

/Jennifer Michener/

QASTC1700